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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 LENNY R. SCHWARTZ, ) CASE NO. C08-1577-MJP  
08 Plaintiff, )  
09 v. ) ORDER AFFIRMING  
10 MICHAEL J. ASTRUE, ) COMMISSIONER  
Commissioner of Social Security, )  
11 Defendant. )  
12 \_\_\_\_\_ )

13 The Court has reviewed the entire record, including the Administrative Record, the  
14 memoranda of the parties, and the Report and Recommendation of United States Magistrate  
15 Judge Mary Alice Theiler. It is therefore ORDERED:

16 (1) The Court adopts the Report and Recommendation.

17 (2) The Court finds that any error by the Administrative Law Judge (“ALJ”)  
18 regarding Plaintiff’s ability to work as a housekeeper/cleaner was harmless. This  
19 Court “will not reverse an ALJ’s decision for harmless error, which exists when it is  
20 clear from the record that the ALJ’s error was inconsequential to the ultimate  
21 nondisability determination.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir.  
22 2008) (quotation omitted). The ALJ found Plaintiff suited for work as a small parts

01 assembler, which offers a “significant number” of jobs as required by 42 U.S.C.  
02 § 423(d)(2)(A) (2006). (Dkt. No. 16 at 6-7.) Because the jobs available as a  
03 housekeeper/cleaner were not necessary to the ALJ’s conclusion, any related error  
04 would not justify reversal. The Court does not reach the issue of whether the ALJ  
05 actually erred in this respect.

06 (3) The Court agrees with Magistrate Judge Theiler’s analysis that the residual  
07 functional capacity assessment (“RFCA”) accounted for limitations due to Plaintiff’s  
08 headaches. (Dkt. No. 16 at 10-11.) A reviewing court may “draw[] specific and  
09 legitimate inferences from [an] ALJ’s opinion.” Magallenes v. Bowen, 881 F.2d 747,  
10 755 (9th Cir. 1989). The Magistrate Judge relied on such inferences, and therefore did  
11 not engage in an “improper post hoc rationalization.” (Dkt. No. 17 at 3.)

12 (4) The Court finds that the ALJ’s statement that “medication and treatment ha[ve]  
13 successfully resolved [Plaintiff’s] symptoms” is consistent with the RFCA. (AR 22.)  
14 The statement is most reasonably understood as saying that Plaintiff’s symptoms had  
15 been resolved to the degree that they did not impose limitations beyond those included  
16 in the RFCA. Plaintiff’s interpretation would render the ALJ’s decision utterly  
17 incoherent. The Court declines to give it such a reading.

18 (5) The Court holds that the ALJ’s classification of malingering as a medically  
19 determinable impairment, if incorrect, was harmless. The inclusion of an additional  
20 impairment would favor a disability claimant, so Plaintiff suffered no prejudice  
21 regardless of any error. See Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1055  
22 (noting that a reviewing court may disregard nonprejudicial errors as harmless). The

01 Court also finds no indication that the precise medical categorization of malingering  
02 affected the ALJ's ultimate disability determination. Any classification mistake  
03 therefore does not constitute reversible error.

04 (6) The Court AFFIRMS the decision of the Commissioner.

05 (7) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

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07 DATED this 17th day of July, 2009.

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10 Marsha J. Pechman  
11 United States District Judge  
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